BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-737-W/S - ORDER NO. 97-251

MARCH 27, 1997

IN RE: Application of Heater of Seabrook, Inc. for Approval of a New Schedule of Rates and Charges for Water and Sewer Service.	)	ORDER DENYING REHEARING AND RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of Heater of Seabrook, Inc. (Heater or the Company) for Rehearing and Reconsideration of our Order No. 97-114, the Order on Remand, in this Docket. Because of the reasoning stated below, the Petition must be denied.

First, Heater alleges that the Commission erred by holding that there had been no increases in certain expenses. Heater cites the Supreme Court holding that the Commission was to compare the data in the case at bar with that of the preceding rate case, and complains that the Commission actually compared present data with that test years found in 1991, 1992, and 1993 rate cases. This assertion comes as somewhat of a surprise to us, since only Order No. 92-1028 in Docket No. 91-627-W/S and Order No. 93-1124 in Docket No. 93-408-W/S were mentioned in this context. See Order No. 97-114 at 2. Even so, it should be noted that Order No. 93-1124 in Docket No. 93-408-W/S was not a full-blown rate case

Order, but only concerned the rate for golf course irrigation using untreated deep-well water, a rate not set in Order No. 92-1028. Thus, the attempt was to compare the expenses in the test year in the case at bar with the full gamut of expenses of the Company, not to compare present expenses with expenses in a series of prior full-blown rate cases. However, to satisfy the concern of Heater of Seabrook, we will eliminate any consideration of Order No. 93-1124 in Docket No. 93-408-W/S, and follow the instructions of the Supreme Court literally, i.e. we will compare the expenses in the test year at bar with the expenses found in the last full-blown rate case alone. Not surprisingly, our conclusion is still the same, that is, we detect only a minimal increase in expenses, and no justification for a rate increase based on an increase in expenses. We therefore discern no error in our holding on this matter in Order No. 97-114.

Next, we address Heater's contention that we should have employed rate base methodology, and not the operating margin. The Company points to the fact that Heater witnesses Parcell and Grantmyre testified that the rate base methodology should have been used, and that, therefore, the Commission should have used that methodology. We are not required by law to use any particular price-setting methodology. The Supreme Court has held that the Commission has wide latitude to determine an appropriate rate-setting methodology. See Nucor Steel v. South Carolina Public Service Commission, 312 S.C. 79, 439 S.E. 2d 270 (1994). The Commission is therefore not bound by the rate-setting

methodology that Company witnesses think is best, if, indeed, the Commission has what it considers a more appropriate methodology for use in the case. In this case, we held that the operating margin was appropriate since it has been used in the past for water and sewer companies similarly situated. We believe that Heater of Seabrook is similarly situated to Carolina Water Service in size, for example, and we have used the operating margin methodology properly in the past in that Company's rate cases. We must also point out the case of Concord Street Neighborhood Association v. Campsen, 309 S.C. 514, 424 S.E. 2d 538 (Ct. App. 1992), which held that although an administrative agency is not bound by stare decisis, it cannot act arbitrarily in failing to follow established precedent. In other words, distinguishing factors must be pointed out before the Commission may properly depart from its past methodology in similar circumstances. No such factors were pointed out here. Thus, this Commission stuck to precedent. It must also be pointed out that the Supreme Court stopped short of reversing the Commission's methodology in the Heater of Seabrook opinion, but only stated that the Commission should consider the circumstances of a particular case before choosing a price-setting methodology. We did exactly that in the present case, and we still believe that the operating margin was the appropriate methodology. Further, applying our view of the evidence and the formula for calculating the operating margin resulted in the 8.60% operating margin granted the Company.

The Company also states its belief that the Commission failed

to state "findings of fact." We discern no error. In remanding the case back to the Commission, the South Carolina Supreme Court expressed the opinion that the $66,640 in availability fees should not have been treated as operating revenue, because of a lack of substantial evidence. In Order No. 97-114, we specifically granted the Company $66,480 in additional annual rate revenue to replace the availability fees that we formerly counted as regulated revenue. We also noted that this was our only change from Order No. 92-1028, wherein we fully explained our reasoning on arriving at the 8.60% operating margin. For this reason, we believe that all appropriate findings of fact are contained in Order No. 97-114, as that Order fully addressed the Supreme Court's concerns. Findings of fact supporting the operating margin reached were fully explained in the prior Order, and other than the matters discussed above, were fully laid out therein.

Lastly, Heater claims that the Commission's denial of the rate increase results in confiscatory rates in violation of Due Process. Upon original appeal of the Commission's original rate Orders, we note that Heater presented the same arguments as appear in its Petition for Rehearing and Reconsideration in this case, i.e. that the Commission's finding of an 8.60% operating margin was confiscatory. See Final Brief of Appellant before the Supreme Court in Case No. 94-CP-40-3479 at 17-21. The Supreme Court had the opportunity to rule on this question squarely before it, but did not do so.

We do not believe that the Supreme Court's intent, as

expressed in its opinion, was to have the Commission re-examine this question. The Court remanded the matter to this Commission for further proceedings in accordance with its opinion. The issue of the alleged "confiscatory" nature of the Commission's holding was not addressed in the Court's opinion. Therefore, we believe that any further consideration of this issue is beyond the scope of the Supreme Court's mandate to us, as expressed in its opinion.

In any event, we believe that the "confiscatory" nature of the Commission's holdings are moot. As stated in Order No. 97-114, the water utility at issue no longer belongs to Heater of Seabrook, Inc., but now resides with the Town of Seabrook Island, and therefore is no longer regulated by us. We hold that considerations of the ability of the utility to attract capital for its investors, and the other factors cited in the Hope-Bluefield cases and other cases as cited by Heater would be irrelevant.

In conclusion, we hold that the Petition of Heater must be denied, based on the above-captioned reasoning. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)